



Mar. 4, 2021

The Honorable Guy Guzzone, Chair
Budget and Taxation Committee
Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 916 "Taxes – Whistleblower Reward Program and Statute of Limitations for Tax Collections"

OPPOSE – RECOMMEND SUMMER STUDY

Dear Chairman Guzzone and members of the Committee,

The Maryland Association of CPAs represents nearly 9,000 Certified Public Accountants throughout the state. These CPAs work in public practice, private industry, government, non-profits, and education. As part of our professional designation and licensure, CPAs are required to uphold the highest standards of ethics. The MACPA supports state efforts in identifying and rectifying bad actors in the realm of adherence to tax laws, however, we have concerns about SB 916. If the General Assembly decides to embark on this path, we recommend additional study in order to address details of the provisions and the implementation process.

Our concerns include, among others:

- How can the statute itself best protect the confidentiality of taxpayer data in the Comptroller's required procedures for whistleblower investigations?
- Should the program be directed at fraud only? There are many situations that are the result of good faith different interpretations of the statutes and regulations, or honest mistakes. How are these to be treated differently?
- Are issues that were contained in a prior audit or settlement clearly excluded from "original information" if reported by a whistleblower who had no knowledge of that audit or settlement?
- Are statutes of limitations on closed periods properly respected?
- Should there be a statutory provision for penalties imposed on a whistleblower who makes a frivolous complaint? (We understand that the Comptroller's Office currently receives such reports, e.g., are determined to have been merely for purposes of annoying the target taxpayer.)

It is good that the proposed program is designed to be administered by the Comptroller's Office where the expertise in tax matters resides, rather than by outside agencies. We question why section 1-406 even mentions disclosures of "information concerning a violation of this article [Tax-General] to any law enforcement agency," and also references "rights and rewards

provided to qui tam plaintiffs under the Maryland False Claims Act” (which should not involve tax matters)?

Information from colleagues in other states that have similar programs tells us that there are indeed abusive situations, for example, a few firms that generate hundreds of repeat claims on the same issue that require the time and expense of the state authorities to address.

Maryland is not Illinois, where a large number of whistleblower complaints involve the issue of vendors not properly charging sales tax on delivery fees (Illinois’s law is complex in providing for when the fees are taxable and when they are exempt), because Maryland law is clearer on its definition. And Maryland is not New York, where fully three-quarters of the reported whistleblower-generated tax revenue from the last few years came from one taxpayer involving the sales tax treatment of telephone service billings.

The Comptroller’s Office has many compliance programs already in place that identify many situations of tax underpayments, along with procedures for securing the proper tax payments. Additionally, the Comptroller’s Office already accepts tips from outsiders about perceived noncompliance – with no whistleblower fees being paid – and the agency investigates those tips. We understand that few of them result in identifying unpaid tax amounts. We are concerned that adding the possibility of a monetary award will lead to more “reports,” investigations that the Comptroller will need to perform, and taxpayers will have to defend, with the possible similar outcome of little or no additional tax revenue for Maryland after spending the investigatory time and costs.

In summary, the MACPA is fully supportive of Maryland collecting all tax dollars that are legally owed. We suggest that further review is warranted of the projected potential revenue enhancements, implementation costs and staff requirements, and statutory details of a whistleblower program. The MACPA would be pleased to assist in that regard. In the meantime, we recommend an unfavorable report on SB 916.

Sincerely,

MACPA State and Local Tax Advisory Group

cc: Nick Manis, Manis Canning & Associates